

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>7/11/2024</u>

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LISA PALENCIA,	:	
	:	
Plaintiff,	:	
-against-	:	
	:	24-CV-4096 (VEC)
THE MUSEUM OF MODERN ART,	:	
	:	<u>ORDER</u>
Defendant.	:	
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VALERIE CAPRONI, United States District Judge:

WHEREAS on May 29, 2024, Plaintiff filed this action against Defendant, *see* Compl., Dkt. 1;

WHEREAS on June 3, 2024, Plaintiff filed proof of service of the Summons and Complaint on “Tom McDonald (Receptionist),” who the process server stated had “identified themselves as the person authorized to accept,” on May 31, 2024, *see* Proof of Service, Dkt. 7;

WHEREAS a corporation may be served by “following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made,” *see* Fed. R. Civ. P. 4(e)(1), 4(h)(1)(A);

WHEREAS Defendant is a not-for-profit corporation, *see* Compl. ¶ 46;

WHEREAS under New York law, “service on a not-for-profit corporation such as the [m]useum is governed by N.Y. C.P.L.R. § 311,” *Lederman v. Benepe*, No. 12-Cv-6028 (PGG), 2014 WL 1318356, at *3 (S.D.N.Y. Mar. 28, 2014);

WHEREAS a corporation must be served by delivering a copy of the summons and of the complaint “to an officer, director, managing or general agent, or cashier or assistant cashier or any other agent authorized by appointment or by law to receive service of process,” N.Y. C.P.L.R. § 311(a)(1);

WHEREAS Plaintiff bears the burden “to show a basis for inferring that the defendant has authorized a particular person to accept service of process on its behalf,” *DeMott v. Baciliious*, No. 11-CV-6996 (PAE), 2012 WL 601074, at *7 (S.D.N.Y. Feb. 24, 2012);

WHEREAS “courts have repeatedly found service on receptionists to be defective” because they are not authorized to accept service for the corporation, *Crawford v. US Sec. Assocs.*, No. 19-CV-105 (PGG), 2020 WL 61171, at *5 (S.D.N.Y. Jan. 6, 2020) (collecting cases); *see also* N.Y. C.P.L.R. § 311 (Practice Commentary) (“Low-level employees who serve as receptionists or clerks obviously are not managing agents.”);


WHEREAS if Defendant was properly served, its deadline to answer or otherwise respond to the Complaint was June 21, 2024, *see* Fed. R. Civ. P. 12(a); and

WHEREAS to date, Defendant has neither appeared nor answered or otherwise responded to the Complaint;

IT IS HEREBY ORDERED that by not later than **Thursday, July 25, 2024**, Plaintiff must either file credible evidence in support of the process server’s purported knowledge that “Tom McDonald (Receptionist)” was authorized to accept service or must serve Defendant again, and file supporting proof of service, in compliance with federal rules.

SO ORDERED.

Date: July 11, 2024
New York, New York



VALERIE CAPRONI
United States District Judge